

APPENDIX

Supreme Court, U. S.

FILED

JUN 13 1977

MICHAEL RODAK, JR., CLERK

IN THE  
Supreme Court of the United States  
OCTOBER TERM, 1976

No. 76-5761

MICHAEL LEE SIMPSON AND TOMMY WAYNE SIMPSON,  
*Petitioners,*

—v.—

UNITED STATES OF AMERICA

No. 76-5796

MICHAEL LEE SIMPSON,  
*Petitioner,*

—v.—

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONS FOR CERTIORARI FILED NOVEMBER 26,  
AND DECEMBER 3, 1976  
CERTIORARI GRANTED APRIL 18, 1977

IN THE  
**Supreme Court of the United States**

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RELEVANT DOCKET ENTRIES

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY

DATE	PROCEEDINGS
11-11-75	Indictment Number 75-86
11-11-75	Indictment Number 75-87
2- 2-76	Judgment/Commitment Order Number 75-87
2-24-76	Judgment/Commitment Order Number 75-86

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

DATE	PROCEEDINGS
10-14-76	Order of the Court of Appeals affirming District Court
11- 9-76	Order of the Court of Appeals denying petition for rehearing

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
LONDON

No. 75-87

UNITED STATES OF AMERICA

vs.

TOMMY WAYNE SIMPSON, MICHAEL LEE SIMPSON,  
TIP EARLS, JR.

COUNT 1.

(T. 18, Sec. 2113(a)(d), 3, U.S.C.)

THE GRAND JURY CHARGES:

That on or about the 4th day of November, 1975, at Middlesboro, Bell County, in the Eastern District of Kentucky,

TOMMY WAYNE SIMPSON

and

MICHAEL LEE SIMPSON

aided and abetted by

TIP EARLS, JR.

did, by force, violence and intimidation, take from the persons and presence of Dorothy Sulfridge, Gail Brooks, Joann Bailey and Imogene Graves, employees of the Commercial Bank, Middlesboro, Kentucky, the sum of \$40,081.00, more or less, of money belonging to and in the custody, control, management and possession of the West End Branch of the Commercial Bank, Middlesboro, Kentucky, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and in committing said offense, the said Tommy Wayne Simpson and Michael Lee Simpson did assault and put in jeopardy the lives of the aforesaid employees of said bank by the use of dangerous weapons, to wit, handguns.

COUNT 2.

(T. 18, Sec. 924(c), U.S.C.)

THE GRAND JURY FURTHER CHARGES:

That on or about the 4th day of November, 1975, at Middlesboro, Bell County, in the Eastern District of Kentucky,

TOMMY WAYNE SIMPSON

and

MICHAEL LEE SIMPSON

used firearms, to wit, handguns, to commit a felony for which they may be prosecuted in a court of the United States, that is, they used the firearms in committing the felony as outlined in Count 1 of this indictment, which is adopted by reference the same as if written in full herein.

A TRUE BILL

\_\_\_\_\_  
FOREMAN

EUGENE E. SILER, JR.  
United States Attorney

By: \_\_\_\_\_  
E. LEE WOODS  
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
LONDON

No. 75-86

UNITED STATES OF AMERICA

*vs.*

TOMMY WAYNE SIMPSON, MICHAEL LEE SIMPSON

COUNT 1.

(T. 18, Sec. 2113(a) (d), U.S.C.)

THE GRAND JURY CHARGES:

That on or about the 8th day of September, 1975, at Middlesboro, Bell County, in the Eastern District of Kentucky,

TOMMY WAYNE SIMPSON

and

MICHAEL LEE SIMPSON

did, by force, violence and intimidation, take from the persons and presence of Joyce Day and Joy Bolinger, employees of the Commercial Bank, Middlesboro, Kentucky, the sum of \$41,898.49, more or less, of money belonging to and in the care, custody, control, management and possession of the East End Branch of the Commercial Bank of Middlesboro, Kentucky, the deposits of which were then insured by the Federal Deposit Insurance Corporation and, in committing the offense, the said Tommy Wayne Simpson and Michael Lee Simpson did assault and put in jeopardy the lives of the aforesaid employees of said bank by the use of dangerous weapons, to wit, handguns.

COUNT 2.

(T. 18, Sec. 924(c), U.S.C.)

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and

MICHAEL LEE SIMPSON

used firearms, to wit, handguns, to commit a felony for which they may be prosecuted in a court of the United States, that is, they used the firearms in committing the felony as outlined in Count 1 of this indictment, which is adopted by reference the same as if written in full herein.

A TRUE BILL

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FOREMAN

EUGENE E. SILER, JR.  
United States Attorney

By: 

---

E. LEE WOODS  
Assistant U. S. Attorney



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
LONDON

London Criminal No. 75-87

UNITED STATES OF AMERICA, PLAINTIFF

vs.

TOMMY WAYNE SIMPSON, MICHAEL LEE SIMPSON AND  
TIP EARLS, JR., DEFENDANTS

TRANSCRIPT OF SENTENCING PROCEEDING—  
February 2, 1976

SENTENCING OF TOMMY WAYNE SIMPSON  
AND MICHAEL LEE SIMPSON

[1] The within typescript contains the sentencing of the defendants Tommy Wayne Simpson and Michael Lee Simpson at the conclusion of the trial of the above styled case which was tried in the United States District Court for the Eastern District of Kentucky sitting at Lexington before the Honorable Bernard T. Moynahan, Jr., Chief Judge, on February 2, 1976, at 11:50 A.M. The defendant Tip Earls, Jr., was found not guilty by the jury and proceedings were had to cover the sentencing of the other two defendants who had been found guilty by the jury. The defendant Tip Earls, Jr., was represented by Mr. William Harrell, Attorney, Tazewell, Tennessee. [2] The defendant Tommy Wayne Simpson was represented by Mr. Shelby Kinkead, Jr., Federal Public Defender's Office, and the defendant Michael Lee Simpson was represented by J. David Porter, Attorney, Public Defender. Proceedings were had as follows:

BY THE COURT: Let the defendant Tip Earls, Jr., be discharged insofar as the indictment is concerned in

London Criminal No. 75-87, the case on trial. Now, Mr. Earls, there is a case pending against you here, No. 75-91. Mr. Porter and Mr. Harrell, are you representing him, each of you?

BY MR. PORTER AND MR. HARRELL: Yes, Your Honor.

BY THE COURT: No bond was fixed in that case inasmuch as he was held on the other charge. What says the United States as to the amount of bond in No. 75-91?

BY MR. ELDON WEBB, for the United States: United States would move for bond, with good and sufficient surety, Your Honor, in the amount of \$25,000.

BY THE COURT: What say the defendants?

BY MR. HARRELL: If the Court please, it would be impossible for this defendant to make that bond.

[3] BY THE COURT: Well, he made a sufficient bond in this case.

BY MR. HARRELL: His attorney did, Your Honor.

BY THE COURT: All right. Let the bond be fixed at the amount of \$10,000. If he can't make it you can file a motion for reduction and I will consider it at that time. Let him be held until that bond be executed or pending some further order of the Court. All right. Let the defendants, Tommy Wayne Simpson and Michael Lee Simpson, come around. Mr. Tommy Wayne Simpson, you were indicted here, and Mr. Michael Lee Simpson, in an two count indictment, Count 1 charging each of you with the offense of bank robbery, Count 2 charging each of you with the offense of using firearms in connection with the commission of same. You appeared with your attorneys, entered a plea of not guilty to the charges contained in that indictment, you being jointly indicted in Count 1 with the defendant Tip Earls, Jr., the jury was empaneled to hear your case. The jury having heard the evidence in the case, arguments of counsel and instructions of the Court retired to consider the case, subsequently returned into court finding you, Mr. Tommy Wayne Simpson guilty on Count 1 and Count 2 of the indictment and you, Mr. Michael Lee Simpson, guilty on both Count 1 and Count 2 of [4] the indict-

ment and you, Mr. Tip Earls, Jr., not guilty on the charge contained in Count 1. He has been discharged insofar as that case is concerned but I want to ask each of you now, Mr. Tommy Wayne Simpson and Mr. Michael Lee Simpson if there is anything you or your attorney wish to say to the Court before the Court pronounces sentence.

BY MR. KINKEAD: Your Honor, I would request that I might be allowed to see the pre-sentence report.

BY THE COURT: Yes, sir. And I can be looking at it at the same time. It has just been handed to me. . . . Anything you wish to say, Mr. Kinkead?

BY MR. KINKEAD: Yes, Your Honor. We would request the Court that if it imposes sentence on Count 2 of the indictment that it run that sentence concurrent with any sentence that is imposed on Count 1. The basis of that request is that I think the case law is clear—if an individual is indicted under Section A and Section D of the bank robbery statute, then those two sections merge for sentencing purposes and the Court cannot impose consecutive sentences. Section D—or paragraph D of the bank robbery statute is the gun section, the section which has aggravated penalty. I think in indicting these defendants under 924, the United States is charging the same thing as if [5] they indicted him under Paragraph D as well. Inasmuch as a D sentence would merge I think a 924 sentence should also merge. So I will ask the Court to impose—if it imposes sentence under Count 2 to run it concurrently with any sentence imposed under Count 1.

BY THE COURT: All right. Anything else? Anything, Mr. Porter?

BY MR. PORTER: No, Your Honor.

BY THE COURT: All right. The 10th Circuit, Mr. Kinkead, in *United States vs. Vigil*, 458 Federal 2d 385, is the only authority that I have been able to find on that proposition. And in that case it gives the 10th Circuit rule that the 18 U. S. Code Section 924C did not aggravate the punishment, for other offenses but really created a new felony and of course if that is the case, bank robbery could be committed by placing a person

in fear by force, violence and intimidation. Under D without specifically saying—saying a dangerous weapon, not specifically a hand gun, when it was first presented to me in an earlier case I came to the conclusion that the offenses might merge but I studied it at that time and after having read the cases, the only case law on the subject, I came to the conclusion that they did not.

[6] BY MR. KINKEAD: Well, I don't want to belabor it, Your Honor, but I think the elements are a separate distinction as to whether the handgun, which is a rather tenuous distinction—

BY THE COURT: Well, it's given me some concern.

BY MR. KINKEAD: I think there is some law that makes the D section merge but the way I understood it the 924 charge accomplishes the same thing as the D section and if the D would merge, I think the 924 would also merge.

BY THE COURT: What says the United States about this?

BY MR. WEBB: If the Court please, I believe that is covered by the language of 924C in which it says "shall be in addition to the punishment provided for the commission of such felony" and it is the position—the last part of that section says, "Nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment involved for the commission of such felony."

BY THE COURT: I haven't seen that.

BY MR. KINKEAD: I think, Your Honor, that 924 section is [7] designed for situations where the statute charges a subsequent offense but does not have a gun section in it and the bank robbery statute, 2113, has a gun section in it.

BY THE COURT: It says this, "Whoever uses a firearm in connection with such felonies shall in addition to the punishment provided for the commission of such felonies be sentenced to a term of not less than one year nor more than ten years" and then further on, "Nor shall the term of imprisonment imposed under this section run concurrently with any term of imprisonment imposed for the commission of such felony." It seems



to say that it imposess a mandatory sentence of not less than one year nor more than ten years. I have heard the request but also United States vs. Ramirez, 482 Fed 2d 807, decided by the Second Circuit. "Section 924C was enacted by Congress as part of the Gun Control Act of 1968. This section creates a separate crime rather than merely providing additional penalty." I don't believe the Court can make it concurrent, Mr. Kinkead, in view of that express finding of the statute, although they do both refer to—18 U. S. Code 924C, although they do both refer to firearms. All right, anything else on behalf of the defendants?

BY MR. PORTER, MR. KINKEAD: No, Your Honor.

[8] BY THE COURT: Gentlemen, I have looked at this pre-sentence report while you were examining it and it presents a most shocking picture as to the defendant Tommy Wayne Simpson. March 29, 1962, aged nine, stealing a .22 caliber Colt pistol, Bell County Juvenile Court, probated to parents. August 14, 1965, petit larceny, stealing a cicycle, Bell County Juvenile Court, disposition unknown. October 24, 1966, aged 14, grand larceny, auto stealing, Bell County Juvenile Court, committed to Child Welfare. January 27, 1968, breach of the peace, drawing a knife, Bell County Juvenile Court, placed under \$500 peace bond for one year, probated. August 12, 1968, violation of curfew, destroying private property, Juvenile Court Bell County, re-committed to Child Welfare, transferred to Kentucky Village September 3, 1968. Had a home visit in December 1968, on December 28, 1968, he ran away. He was returned to Kentucky Village, declared absent without leave, discharged from the Department of Child Welfare September 29, 1971. February 21, 1970, absent without leave, Police Court Middlesboro, Kentucky, released to military authorities. February 25, 1970, absent without leave, Bell County Court, turned over to United States military authorities. March 24, 1970, absent without leave, Bell County Juvenile Court, Pineville, Kentucky, turned over to the United States Military authority. May 27, 1970, petit larceny, Knox County Criminal Court, Knoxville,

Tennessee, one year. Received at State [9] Reformatory, Nashville, Tennessee, September 14, 1970. His sentence was to expire on February 27, 1971. However, he escaped on January 29, 1971, 29 days before his sentence was to run out. March 17, 1971, Count 1, armed robbery, Count 2, malicious shooting and wounding with intent to kill, Bell Circuit Court, Pineville, Kentucky. Count 1, ten years, Count 2, two years consecutive. Received at the Kentucky State Reformatory May 14, 1971, escaped December 23, 1971. January 28, 1972, armed robbery, Knox County Criminal Court, Knoxville, Tennessee, March 30, 1972, 15 years. Received at State Penitentiary, Nashville, Tennessee, April 6, 1972, escaped from the state farm, March 15, 1973, arrested the same day. June 13, 1973, felonious escape, Lauderdale Circuit Court, Ripley, Tennessee, one year to be served consecutive to the sentence he was serving. June 13, 1975, petit larceny, Lauderdale Circuit Court, Ripley, Tennessee, one year concurrent with above sentence. Charged with stealing a car the day he escaped on or about March 15, 1973. October 31, 1973, murder, first degree, Dyer Circuit Court, Dyersburg, Tennessee, 20 years and one day. This happened while he was on escape, March 15, 1973. The sentence was to run consecutive to the sentence he was serving at the time of escape but concurrent with escape and petit larceny sentences. The sentence was to begin September 22, 1980, and probationary parole date was September 23, 1989, regular parole September 23, 1990, expiration date October 23, 1991. However, he escaped July 28, [10] 1975. October 28, 1975, robbery first degree, Bell Circuit Court, Pineville, Kentucky, pending. Co-defendants were Tommy Wayne Simpson and Robert Simpson. That was his brother who testified here. This involved the robbery of the Capital Finance, Middlesboro, Kentucky, August 13, 1975. October 28, 1975, robbery first degree, Bell Circuit Court, Pineville, Kentucky, pending. Co-defendant was Tony Wayne Sexton. This involved the robbery of the A & P store in Middlesboro, on August 9, 1975. October 28, 1975, robbery first degree, Bell Circuit Court, Pineville, Kentucky. The co-defendants were Mike Simpson, Donny



Morgan Crane, aiding, and Robert Simpson, aiding. This involved the robbery of the East End Branch of the Commercial Bank, Middlesboro, Kentucky, September 8, 1975. I believe that case is pending on this docket. You are not on trial for those things, Mr. Simpson. Anything you want to say about it? You have the right to but you don't have to say anything. The Court does not consider them insofar as imposition of sentence in this case is concerned except insofar as it might affect whether you would be a parole risk which the Court would not consider under any circumstances—probation risk which the Court would not consider under any circumstances on the facts as disclosed by the evidence in this case. Anything you want to say?

BY TOMMY WAYNE SIMPSON: No, Your Honor.  
 [11] BY THE COURT: Mr. Michael Lee Simpson. September 16, 1970, shoplifting, Bell County Juvenile Court, Pineville, Kentucky, probated to parents. October 5, 1971, breaking and entering, Bell County Juvenile Court, certified to the grand jury, indicted October 8, 1971 on storehouse breaking, three counts. October 16, plea of guilty to count 1, amended charge of petit larceny and received a sentence of 12 months suspended except for time served. He served 120 days and counts 2 and 3 were dismissed. February 4, 1974, no operator's license, Police Court Middlesboro, \$10 and costs. February 18, 1975, parking in a yellow zone, Middlesboro, Police Court, day to day. I guess that means continued. March 1, 1975, no operator's license, Police Court, Middlesboro, Kentucky, \$10 and costs. May 22, 1975, murder by intentionally causing the drowning of Ralph Marsee, Bell Circuit Court, Pineville, Kentucky, pending. Co-defendant is Ellen May Marsee. October 10, 1975, robbery first degree, Bell Circuit Court, Pineville, Kentucky. Co-defendants are Tommy Wayne Simpson, Donald Morgan Crane, aiding, and Robert Simpson, aiding. This involves robbery of the East End Branch, Commercial Bank on September 8, 1975. That charge is pending I believe on this docket. You don't have to say anything but is there anything you want to say about this, Mr. Michael Lee Simpson?

BY MR. MICHAEL L. SIMPSON: No, sir.

[12] BY THE COURT: You are not on trial for any of those things. You have been tried on some of them and some of them are pending. They are something to be considered insofar as probation would be concerned. On the facts of this case I could not grant probation under any set of circumstances. It's a very serious case. Undisputed evidence, this robbery was committed by you two young men using firearms, locked these people in the vault, took the bank manager's car and due to a set of circumstances that were unforeseen the road was blocked and the officer happened to be there who knew you. A shooting incident occurred that has been described in the evidence. It is most regrettable. It is the Judgment of the Court that the defendant Tommy Wayne Simpson and Michael Lee Simpson, and each of them, be committed to the custody of the Attorney General of the United States for a period of twenty-five (25) years upon the charge contained in Count 1 of the indictment. It is the further judgment of the Court that defendants Tommy Wayne Simpson and Michael Lee Simpson, and each of them, be committed to the custody of the Attorney General of the United States for an additional period of ten (10) years on the charge contained in Count 2 of the indictment. That is to say, the sentence imposed on Count 2 of the indictment of ten years is to be served consecutive to and to begin at the expiration of the sentence heretofore imposed on Count 1 of the indictment, of 25 years, as [13] to each defendant, the total period of confinement to be a period of thirty-five (35) years. Now, Mr. Tommy Wayne Simpson and Mr. Michael Lee Simpson, it is my duty to advise you that as you were tried by a jury and found guilty you have the right to an appeal. If you are unable to defray the cost of an appeal you may be permitted to appeal in forma pauperis. The Court further finds that in imposing sentences on these gentlemen, Tommy Wayne Simpson and Michael Lee Simpson, that said defendants will not benefit from the provisions of the Youth Corrections Act and has declined to sentence them thereunder and has given a straight committed sentence herein. Madame

Clerk, will you please advise the defendants as to their rights?

BY THE CLERK: "I, the defendant, in the above styled case hereby acknowledge and state that the Court has advised me this 2nd day of February, 1976, of my right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis without cost to me.

"This statement was read to me by the Clerk in open court after the Court informed me of my right to appeal and the explanation by the Court of my right to appeal was clearly and fully understood by me." (signed by defendant.)

"Michael Lee Simpson. I, the defendant in the above styled case, hereby acknowledge and state that the Court has advised me this 2nd day of February, 1976, of my right [14] to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis without cost to me. This statement was read to me by the Clerk in open court after the Court informed me of my right to appeal and the explanation by the Court of my right to appeal was clearly and fully understood by me." (signed by defendant.)

BY THE COURT: Gentlemen, while the defendants Simpson are present, on this case 75-86 on the docket of this Court, charging these defendants with the offenses announced therein, I have entered an order assigning that case for trial three weeks from today February 23, at 9:30 in this courtroom. I have further entered an order directing the summoning of an additional 85 prospective jurors to sit in the trial of this case since this jury panel here has heard this case and are therefore perhaps disqualified to hear the second one. All right, gentlemen.

At this time the defendants were remanded to the Marshal and Court was adjourned.

[Court Reporter's certificate omitted in printing]

[1] UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
LONDON

London Criminal No. 75-86

UNITED STATES OF AMERICA, PLAINTIFF

vs.

TOMMY WAYNE SIMPSON, DEFENDANT

TRANSCRIPT OF SENTENCING PROCEEDING—  
February 24, 1976

The within transcript comprises the record on appeal as designated by the Federal Public Defender's Office, Lexington, acting upon behalf of the above defendant. The designation of record specifies the indictment, the allocution, the sentencing and the final judgment herein. This trial was held in the above Court beginning on February 23, 1976 and running on successive or subsequent days until completed, before the Honorable Bernard T. Maynahan, Chief Judge. The plaintiff herein was represented by Mr. James Arehart, Assistant United States Attorney, and the defendant above was represented by Mr. Fred Fugazzi, Jr., of the Federal Public Defender's Office. Mr. Arehart in opening statement read the indictment, as follows:

BY MR. AREHART: "United States of America vs. Tommy Wayne Simpson and Michael Lee Simpson, United States District Court [2] for the Eastern District of Kentucky, London, London No. 75-86. Count 1: The Grand Jury charges that on or about the 8th day of September 1975, at Middlesboro, Bell County, Eastern District of Kentucky, Tommy Wayne Simpson and Michael Lee Simpson, did by force, violence and intimidation take from the person and presence of Joyce Day and Joy Bollinger, employees of the Commercial Bank, Middlesboro, Kentucky, the sum of \$41,898.49, more or less, of



money belonging to and in the care, custody, control, management and possession of the East End Branch of the Commercial Bank of Middlesboro, Kentucky, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and in committing the offense the said Tommy Wayne Simpson and Michael Lee Simpson did assault and put in jeopardy the lives of the afore-said employees of the said bank by the use of dangerous weapons, to wit, handguns. Count 2: that on or about the 8th day of September 1975, at Middlesboro, Bell County, in the Eastern District of Kentucky, Tommy Wayne Simpson and Michael Lee Simpson used firearms, to wit, handguns, to commit a felony for which they may be prosecuted in a Court of the United States, that is, they used firearms to commit a felony as outlined in Count 1 of this indictment which is adopted by reference the same as if written in full herein."

VERDICT: We, the jury, find as to the charge contained in Count 1, Tommy Wayne Simpson guilty. . . We, the jury, find as [3] the charge contained in Count 2 the defendant, Tommy Wayne Simpson, guilty . . . John H. Marsh, Foreman.

BY THE COURT: Is that your verdict, members of the jury? Any question as to the form of the verdict upon behalf of either the United States or the defendants?

BY MR. AREHART: No, Your Honor.

BY THE DEFENSE: No, Your Honor.

BY THE COURT: Very well. Let the defendants come around. Let the record show the defendants and their counsel are present in the courtroom, the United States Attorney is present in the courtroom. Mr. Tommy Wayne Simpson and Mr. Michael Lee Simpson, each of you were indicted by the Grand Jury charged with the offense of bank robbery in violation of Title 18 Section 2113 A and B of the United States Code, in Count 1 of the indictment; you are charged with using firearms in connection with the commission of said bank robbery offense, in Count 2 of the indictment. You appeared with your attorneys, entered a plea of not guilty to the charges contained in the indictment. Thereafter a jury was empanelled to hear your case and the jury having heard the

evidence in the case, the arguments of counsel and the instructions of the Court, retired to consider [4] the case and subsequently returned into court a verdict finding each of you guilty of the charges contained in the two counts of the indictment. I want to ask you now if there is anything that either of you wishes to say or anything your attorneys wish to say before the judgment of the court is pronounced.

BY MR. FUGAZZI: If the Court please, on behalf of Mr. Tommy Wayne Simpson I want to state to the Court that on the 924C charge and the 2113 B charge should merge, as I have stated to the Court before.

BY THE COURT: Well, we had that similar issue come up in 75-87 and I ruled in that case that in my opinion, based on the only Circuit Court of Appeals case of record, that they did not merge and I am of the opinion that if you read the applicable case law they do not merge. I believe that other case is in the process of being appealed.

BY MR. FUGAZZI: Yes, Your Honor.

BY THE COURT: I understand your request but the statutes and the legislative history indicates an intention to impose an additional punishment. All right. Anything else?

BY MR. FUGAZZI: No, Your Honor.

[5] BY MR. WILMOTT: Your Honor, I would make the same request on behalf of Michael Lee Simpson.

BY THE COURT: And I make the same opinion and perhaps it will be resolved in the Sixth Circuit Court of Appeals and perhaps eventually by the Supreme Court. The only applicable case law on it I could find in the Circuit Court was contrary to the position that you gentlemen take. I think that is binding on it in the absence of something different from the Sixth Circuit. All right. Anything else, gentlemen?

BY THE DEFENSE: No, Your Honor.

BY THE COURT: Anything, Mr. Tommy Wayne Simpson?

BY MR. TOMMY SIMPSON: No, sir, there isn't.

BY THE COURT: Anything you wish to say, Mr. Michael Lee Simpson?

BY MR. MICHAEL SIMPSON: No, sir.

BY THE COURT: Well, I note, Mr. Tommy Wayne Simpson, March 29, 1962, stealing a .22 caliber Colt, Bell County Juvenile [6] Court, probated. August 14, 1965, petit larceny, stealing a bicycle, Bell County Juvenile Court, disposition unknown. October 24, 1966, grand larceny, auto stealing, Bell County Juvenile Court, committed to Child Welfare. January 27, 1968, breach of the peace, drawing a knife, Bell County Juvenile Court, placed under \$500 peace bond for one year, probated. August 12, 1968, violation of curfew, destroying private property, Bell County Juvenile Court, re-committed to Child Welfare. Returned as placement violator on August 17, 1968, transferred to Kentucky Village September 3, 1968, given a home visit in December 1968, December 28, 1968, ran away, declared absent without leave, discharged September 29, 1971. February 21, 1970, absent without leave, Police Department, Middlesboro, Kentucky, released to the military authorities. February 25, 1970, absent without leave, Bell County Court, Pineville, Kentucky, turned over to United States Military Police. March 24, 1970, absent without leave, Bell County Court, Pineville, Kentucky, turned over to U.S. Military Police. May 27, 1970, petit larceny, Knox County Court, Knoxville, Tennessee, one year. Sentence was to expire February 27, 1971. However, he escaped January 28, 1971. March 17, 1971, Bell Circuit Court, Count 1, armed robbery, Count 2, malicious shooting wounding with intent to kill. Count 1, ten years and Count 2, two years consecutive, received at State Reformatory, LeGrange, Kentucky, May 14, 1971, escaped December 23, 1971. January 28, 1972, armed robbery, [7] Knox County Criminal Court, Knoxville, Tennessee, 15 years. Received at State Penitentiary April 6, 1972, escaped from State Farm March 15, 1973. Arrested the same day. June 13, 1973, felonious escape, Lauderdale Circuit Court, Ripley, Tennessee, one year to be served consecutive to the sentence he was then serving. That's the same escape. June 13, 1973, petit larceny, Lauderdale Circuit Court, Ripley, Tennessee, one year concurrently to above sentence. Charged with stealing a car on the day he escaped, on

March 15, 1973. October 31, 1973, murder in the first degree, Dyer Circuit Court, Dyersburg, Tennessee, 20 years and one day. This happened while he was on escape. The sentence was to run consecutive to the sentence he was serving at the time of the escape but concurrent with the escape and petit larceny sentence from Lauderdale County. Sentence was to begin September 22, 1980, and probationary parole was September 23, 1989, regular parole September 23, 1990, expiration dated October 23, 1991. However, he escaped July 28, 1975. October 28, 1975, robbery first degree, Bell County Circuit court, Pineville, Kentucky, pending. This involves the robbery of Capital Finance, Middlesboro, Kentucky, on August 13, 1975. October 28, 1975, robbery first degree, Bell Circuit Court, Pineville, Kentucky, pending. This involves a robbery of the A & P Store, Middlesboro, Kentucky, August 9, 1975. October 28, 1975, robbery, first degree, Bell Circuit Court, pending. The defendants were Mike Simpson, Donna Crane [8] and Robert Simpson. This involved the robbery of the East End Branch of the Commercial Bank, Middlesboro, Kentucky, on September 8, 1975. That's the charge that you were tried on here today. Classification material from the Kentucky Department of Corrections, Frankfort, Kentucky, involving the 12-year sentence which the defendant received May 10, 1971, for armed robbery and malicious shooting and wounding with intent to kill. This was out of the Bell Circuit Court, Pineville, Kentucky, and the defendant's statement of the classification study, states, "My wife and I were stranded in Harrogate, Tennessee. Mark Johnson came along and picked us up. When we got to Middlesboro he demanded pay and I told him I had no money. He grabbed my wife by the leg and said he would just as soon take it out in trade of my wife. I grabbed him and in the scuffle he pulled a .22 pistol and I knocked it out of his hand. He came at me. I shot him four times in the head. During the scuffle he lost his money and I picked it up." However, the version in Middlesboro is considerably different. According to certain authorities, Tommy Simpson and his wife were on a rural road in Tennessee on a stolen motorcycle. Tommy Simp-



son was in escape status, having recently escaped from state custody in Tennessee. The motorcycle stalled and Simpson went to a store and told the owner that his wife was ill and need to be rushed to the Middlesboro Clinic. A man brought them to Middlesboro. When they arrived, the wife jumped out of the car and ran to Simpson's [9] parents' home, which was located near the Middlesboro Clinic. Simpson then pulled a gun and forced the man to drive into a cemetery in Middlesboro, robbed him and told him to get out of the car and lie face down. Simpson shot the man five times in the back of the head. That's so much for that, except it leaves out one thing. Give me No. 75-87, please, ma'am. Do you have the record in here? Well, No. 75-87 charges—No. 75-87 on which you were tried in this Court on February 2nd charges you and each of you with the robbery of the West End Branch of the Commercial Bank of Middlesboro by use of firearms. And you were convicted and the evidence in that case was that you went into the West End Branch of this bank, robbed the employees of the bank under similar conditions. You took the bank manager's car and started out through Cumberland Gap and unfortunately for you all, the road was blocked there where they were trying to pull a car back up right near the Virginia border with the wrecker and the Deputy Sheriff from Middlesboro was up there at the scene and had got the report that you had robbed the bank. You were then in the bank manager's car and then when he advanced on you where you were stopped by traffic, each one of you had a gun. Mr. Michael Simpson had the automatic that the Government had here but which it was unable to show was used in this robbery. You made a menacing movement toward the officer, at which point he shot Mr. Michael Simpson, went back behind the quarter panel of the car and shot Mr. Tommy Wayne Simpson. Mr. [10] Tommy Wayne Simpson had a revolver in his left hand and was trying to back up the car and get away, had to change the gears. So about 60 days apart as I recall you robbed the East End Branch of \$41,000 odd and you robbed the West End Branch of the same bank of some \$41,000. In the second case you still had the money

behind the seat in this pillow case. Very brassy fellows. Of course, you have already been sentenced to 35 years, Mr. Tommy Wayne Simpson, on the robbery of the West End Branch. Now, you appear before this Court for sentencing for robbing the East End Branch.

Now, Mr. Michael Lee Simpson, September 16, 1970, shoplifting, Bell County Juvenile Court, Pineville, Kentucky, probated. October 5, 1971, breaking and entering, Bell County Juvenile Court, certified to the Grand Jury. Indicted for storehouse breaking, three counts. October 16, you entered a plea of guilty to count 1 amended to petit larceny, received a sentence of 12 months suspended except for time served. He served 128 days. Counts 2 and 3 were suspended. February 1, 1974, no operator's license, Police Court, Middlesboro, Kentucky, \$10 and cost. February 18, 1975, parking in a prohibited zone. Police Department, continued. March 7, 1975, no operator's license, Police Court, Middlesboro, May 27, 1975, murder by intentionally causing the drowning of Ralph Marsee, Bell Circuit Court, pending. Co-defendant is Ellen May Marsee. As I recall, the wife of the man that was drowned, or alleged to have drowned. [11] October 28, 1975, robbery, first degree, Bell Circuit Court, Pineville, Kentucky. This involves the robbery of the East End Branch of the Commercial Bank on September 8, 1975. That is the offense for which you have been convicted here. You are also indicted in 75-87 with Tommy Wayne Simpson of robbing the West End Branch of the same bank and, as he was, you were heretofore convicted in this Court on that charge and received a 35 year sentence. Now, you are only on trial, gentlemen, on the charge contained in this case. But I don't believe I have ever seen such gangster tactics out of such relatively young men. You robbed these two banks. There is no doubt of that. You have been convicted of that. You have been charged and convicted of some of these other things. You are not on trial for those things. But it is terrible that in a town the size of Middlesboro with a population of about 12,000 people that you go over on one end of town and rob one bank and then come back in two months and rob the one on the other end

and get away with \$40,000 each time. The evidence was that you were big, brave fellows, took these pistols and poked in these young women's faces, told this young man to put his hands up on the table and scoot back. The public is entitled to protection and this thing of just coddling these kinds of terrible offenses as far as I am concerned has to stop. It is the judgment of the Court that in this case the defendants, Tommy Wayne Simpson and Michael Lee Simpson, and each of them, be committed to the [12] custody of the Attorney General of the United States for a period of 25 years on the charge contained in Count 1 of the indictment. Further, it is the judgment of the Court that the defendants and each of them be committed to the custody of the Attorney General of the United States for an additional period of ten years on the charges contained in Count 2 of the indictment, the two sentences to be served consecutively, total sentence to be 35 years, and that sentence imposed in this case, in each of these cases, to be served consecutively to the sentences heretofore imposed on said defendants in this Court on February 2, 1976 in No. 75-87. The sentences this day imposed are to be served consecutively to one another and to be served consecutively—that is, to begin at the expiration of the sentences heretofore imposed for the robbery of the West End Branch of this bank. All of these sentences to be served consecutively. That is, one in addition to the other. The public is entitled to some protection and I just am appalled that you would come into a town like Middlesboro and just attempt to take over a bank. Like a bunch of highwaymen and thugs. All right. The Court further finds that the defendants will not benefit from the provisions of the Youth Corrections Act and declines to sentence the defendants thereunder. It's my duty under the law to advise each of you that as you were tried by a jury and found guilty, you have a right to an appeal. If you are unable to defray the cost of an appeal you may be [13] permitted to appeal in forma pauperis upon making the proper showing. Read the statement to them as to their right of appeal.

BY THE CLERK: Yes, Your Honor. London Crim-

inal No. 75-86, United States of America v. Tommy Wayne Simpson. I, the defendant in the above-styled case, hereby acknowledge and state that the Court has advised me this 24th day of February, 1976, of my right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis without cost to me. This statement was read to me by the Clerk in open court after the Court informed me of my right to appeal and the explanation by the Court of my right to appeal was clearly and fully understood by me. (signed by defendant and counsel.)

London Criminal No. 75-86, United States of America v. Michael Lee Simpson. I, the defendant in the above-styled case, hereby acknowledge and state that the Court has advised me this 24th day of February 1976, of my right to appeal and of the right of a person who is unable to pay the cost of an appeal to apply for leave to appeal in forma pauperis without cost to me. This statement was read to me by the Clerk in open court after the Court informed me of my right to appeal and the explanation by the Court of my right to appeal was clearly and fully understood by me. (Signed by defendant and counsel.)

[14] BY THE COURT: Now, gentlemen, counsel has been provided with the statement of duties of counsel in connection with the any contemplated appeal. Let the record show—let them be so provided and let the record show that they have been so provided. Now, the Court further recommends that these defendants not be considered for parole when eligible. Their history of violence indicates that they constitute a menace to society and society is entitled to be protected. All right. Let the defendants be remanded to the custody of the Marshal.

\* \* \*

[Court Reporter's certificate omitted in printing]



United States of America vs.

DEFENDANT

**TOMMY WAYNE SIMPSON**

**United States District Court for**

**EASTERN DISTRICT OF KENTUCKY  
LOUISVILLE**

DOCKET NO. **75-87**

**JUDGMENT AND PROBATION/COMMITMENT ORDER**

In the presence of the attorney for the government  
the defendant appeared in person on this date

**at Lexington**

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

**Shelby Kinkadee, Jr.**  
(Name of counsel)

MONTH DAY YEAR  
**February 2, 1976**

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged  
☒ GUILTY to Counts 1 and 2

FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **Bank robbery and assaulting and putting in jeopardy lives of bank employees by use of dangerous weapons, in violation of Title 18, Section 2113(a)(4), U.S. Code and using firearms to commit a felony, in violation of Title 18, Section 924(c) U.S. Code**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE  
OR  
PROBATION  
ORDER

**TWENTY FIVE (25) YEARS on Count One  
TEN (10) YEARS on Count Two**

**Imprisonment on Count Two to be served consecutive to and to begin at the expiration of service of sentence in Count One.**

SPECIAL  
CONDITIONS  
OF  
PROBATION

**The Court finds that the defendant will not benefit under the provisions of the Youth Corrections Act and declines to sentence under said Act.**

**A presentence report was submitted to the Court before imposition of sentence and copies were furnished to counsel for the defendant and counsel for the plaintiff, pursuant to Rule 32, F.R.C.P.**

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

**BERNARD T. MOYNAHAN, JR.**

**Bernard T. Moynahan, Jr., Judge** FEB 5 1976

THIS DATE FEB 5 1976

**FILED FEB 5 1976**  
CERTIFIED AS A TRUE COPY ON

**Arthur C. Collins**  
( ) CLERK  
( ) DEPUTY

(It is recommended that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.)

EASTERN DISTRICT OF KENTUCKY  
LONDON

DEFENDANT

MICHAEL LEE SIMPSON

DOCKET NO. 75-87

## JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government  
the defendant appeared in person on this date

at Lexington

COUNSEL

☐ WITHOUT COUNSELHowever the court advised defendant of right to counsel and asked whether defendant desired to  
have counsel appointed by the court and the defendant thereupon waived assistance of counsel.☒ WITH COUNSEL

Shelby Kinkead, Jr. and J. David Porter

(Name of counsel)

MONTH DAY YEAR

February 2, 1976

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE, ☒ NOT GUILTYThere being ~~finding~~/verdict of☐ NOT GUILTY. Defendant is discharged  
☒ GUILTY to Counts 1 and 2FINDING &  
JUDGMENTDefendant has been convicted as charged of the offense(s) of Bank robbery and assaulting and  
putting in jeopardy lives of bank employees by use of dangerous weapons,  
in violation of Title 18, Section 2113(a)(d), U.S.Code and using  
firearms to commit a felony, in violation of Title 18, Section 924(c)  
U.S.CodeThe court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary  
was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is  
hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period ofSENTENCE  
OR  
PROBATION  
ORDERTWENTY FIVE (25) YEARS on Count One  
TEN (10) YEARS on Count TwoImprisonment on Count Two to be served consecutive to and to begin  
at the expiration of service of sentence in Count One.The Court finds that the defendant will not benefit under the  
provisions of the Youth Corrections Act and declines to sentence under  
said Act.SPECIAL  
CONDITIONS  
OF  
PROBATIONA presentence report was submitted to the Court before imposition  
of sentence and copies were furnished to counsel for the defendant and  
counsel for the plaintiff, pursuant to Rule 32, F.R.C.P.ADDITIONAL  
CONDITIONS  
OF  
PROBATIONIn addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the  
reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at  
any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke  
probation for a violation occurring during the probation period.COMMITMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY

☒ U.S. District Judge

BERNARD T. MOYNAHAN, JR.

☐ U.S. MagistrateIt is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.FILED FEB 5 1976  
CERTIFIED AS A TRUE COPY ON

THIS DATE FEB 5 1976

BY *B. T. Moynahan, Jr.* CLERK  
DEPUTY

Bernard T. Moynahan, Jr., Judge February 5, 1976



# United States District Court for EASTERN DISTRICT OF KENTUCKY LONDON

DEFENDANT

TOMMY WAYNE SIMPSON

DOCKET NO. 75-86

## JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government  
the defendant appeared in person on this date

at Lexington

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Fred Fugate, Jr.

(Name of counsel)

MONTH DAY YEAR  
February 24, 1976

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTYThere being ~~no~~ verdict of

☐ NOT GUILTY. Defendant is discharged  
☒ GUILTY. Counts 1 and 2

FINDING &  
JUDGMENT

Defendant has been convicted as charged of the offense(s) of bank robbery and assaulting and putting in jeopardy lives of bank employees by use of dangerous weapons, in violation of Title 18, Section 2113(a)(d), United States Code, using firearm to commit a felony, in violation of Title 18, Section 924(c), United States Code.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE  
OR  
PROBATION  
ORDER

TWENTY FIVE (25) YEARS on Count One  
TEN (10) YEARS on Count Two

Imprisonment in above sentences to be served consecutive to one another and to be served consecutive to the sentence heretofore imposed on said defendant in this court on February 2, 1976 in London Criminal number 75-87.

SPECIAL  
CONDITIONS  
OF  
PROBATION

The Court finds that the defendant will not benefit from the provisions of the Federal Youth Corrections Act and declines to sentence thereunder.

ADDITIONAL  
CONDITIONS  
OF  
PROBATION

A presentence report was submitted to the Court before imposition of sentence.

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMENT  
RECOMMEN-  
DATION

The court orders commitment to the custody of the Attorney General and recommends,

that the defendant not be considered for parole when eligible.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

CERTIFIED AS A TRUE COPY ON

THIS DATE

Feb 26, 1976

BY

Harry C. Anderson

( ) CLERK

☒ DEPUTY

Edward T. Maynard, Jr., Judge

EASTERN DISTRICT OF KENTUCKY

MICHAEL LEE SIMPSON

LONDON

DOCKET NO. 75-86

**JUDGMENT AND PROBATION ORDER**In the presence of the attorney for the government  
the defendant appeared in person on this dateMONTH DAY YEAR  
February 24, 1976

at Lexington

**COUNSEL**☐ WITHOUT COUNSELHowever the court advised defendant of right to counsel and asked whether defendant desired to  
have counsel appointed by the court and the defendant thereupon waived assistance of counsel.☒ WITH COUNSEL

Robert Willmott

(Name of counsel)

**PLEA**☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. counts 1 and 2**FINDING &  
JUDGMENT**

Defendant has been convicted as charged of the offense(s) of bank robbery and assaulting and putting in jeopardy lives of bank employees by use of dangerous weapons, in violation of Title 18, Section 2113(a)(d), United States Code; using firearm to commit a felony, in violation of Title 18, Section 924(c), United States Code.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

**SENTENCE  
OR  
PROBATION  
ORDER**

TWENTY FIVE (25) YEARS on Count One  
TEN (10) YEARS on Count Two

**SPECIAL  
CONDITIONS  
OF  
PROBATION**

Imprisonment in above sentences to be served consecutive to one another and to be served consecutive to the sentence heretofore imposed on said defendant in this court on February 2, 1976 in London Criminal number 75-87.

The Court finds that the defendant will not benefit from the provisions of the Federal Youth Corrections Act and declines to sentence thereunder.

A presentence report was submitted to the Court before imposition of sentence.

**ADDITIONAL  
CONDITIONS  
OF  
PROBATION**

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

**COMMITMENT  
RECOMMEN-  
DATION**

The court orders commitment to the custody of the Attorney General and recommends,  
that the defendant not be considered for parole  
when eligible.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

Bernard T. Moynahan, Jr., Judge

Date February 26, 1976

It is ordered that the Clerk deliver  
a certified copy of this judgment  
and commitment to the U.S. Mar-  
shal or other qualified officer.

Eastern District of Kentucky  
**FILED**  
FEB 26 1976  
AT LEXINGTON  
DAVIS T. MCGARVEY  
CLERK, U.S. DISTRICT COURT

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Nos. 76-1459, -1460, -1465, -1466

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Nos. 76-1459 & -1466

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs

MICHAEL LEE SIMPSON, DEFENDANT-APPELLANT

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Nos. 76-1460 & -1465

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs

TOMMY WAYNE SIMPSON, DEFENDANT-APPELLANT

---

ORDER—Filed Oct. 14, 1976

Before WEICK, PECK and ENGEL, Circuit Judges.

Upon consideration of the record, the briefs and oral arguments of counsel we are of the opinion that the defendants were properly charged with the armed robbery of two banks, on different occasions, and were convicted by juries in two trials, and they received consecutive sentences for violations of 18 U.S.C. § 2113(d) and 18 U.S.C. § 924(c).

The two statutes, in our opinion, relate to separate offenses involving different elements, and they are not duplicious. *United States v. Crew*, — F.2d — (4th Cir. No. 75-1581, 1976). *Perkins v. United States*, 526

F.2d 688 (5th Cir. 1976). The District Court was not required to impose concurrent sentences for the two separate bank robberies nor under the two statutes.

Finding no prejudicial error either in the convictions or in the sentences, it is ORDERED that the judgments of conviction be and they are hereby AFFIRMED.

ENTERED BY ORDER OF THE COURT.

/s/ John P. Hehman  
Clerk

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

Nos. 76-1459, -1460, -1465, -1466

\_\_\_\_\_  
Nos. 76-1459 & -1466

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs

MICHAEL LEE SIMPSON, DEFENDANT-APPELLANT

\_\_\_\_\_  
Nos. 76-1460 & -1465

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs

TOMMY WAYNE SIMPSON, DEFENDANT-APPELLANT

\_\_\_\_\_  
ORDER—Filed Nov. 9, 1976

Before WEICK, PECK and ENGEL, Circuit Judges.

Upon consideration it is ORDERED that the petition for rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT.

/s/ John P. Hehman  
Clerk



## SUPREME COURT OF THE UNITED STATES

No. 76-5761

MICHAEL LEE SIMPSON and TOMMY WAYNE SIMPSON,  
PETITIONERS

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is consolidated with No. 76-5796 and a total of one hour is allotted for oral argument.

April 18, 1977

## SUPREME COURT OF THE UNITED STATES

No. 76-5796

MICHAEL LEE SIMPSON, PETITIONER

v.

UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is consolidated with No. 76-5761 and a total of one hour is allotted for oral argument.

April 18, 1977